SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 793

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

vs.

WARNER HOLDING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. C. A., Eighth Circuit	A	1
Caption [omitted in printing]	A	1
Record from D. C. U. S., District of Minnesota	1	1
Order Substituting Chester Bowles, Administrator, Office of Price Administration, in the Place of Prentiss M. Brown, and Granting Plaintiff Leave to File Amended and Supplemental Complaint, etc	1	1
Amended and Supplemental Complaint	2	2
Exhibits A to A-3—Schedules Relating to Description of Housing Accommodations, Maximum Rents Established by Regulation and Rents Demanded and Received by Defendant, etc	8	6
Exhibit B—Lease, Warner Holding Company to J. T. Morgan, August 4, 1941	12	9
Exhibit C—Letter, Warner Holding Company to Mrs. Elizabeth Hoffman, September 24, 1943	17	13
Answer to Amended and Supplemental Complaint	18	14
Amendment to Prayer of Amended and Supplemental Complaint	24	18
Opinion of Court, Joyce, J	24	19
Findings of Fact, Conclusions of Law and Order for Judgment	36	28
Exhibit A—Statement Relating to Amounts of Rent Collected in Excess of Maximum Rent, etc	42	32
Exhibit B—Letter, Warner Holding Company to Mrs. Elizabeth Hoffman, September 24, 1943	52	39

687324—46——1

	Original	Print
Record from D. C. U. S., District of Minnesota—Continued		
Judgment	53	40
Notice of Appeal and Recital of Clerk of District Court of Mailing of Copy to Counsel for Defendant	54	41
Statement of Points To Be Relied Upon on Appeal	56	42
Designation of Matters to be Contained in Transcript on Appeal	57	43
Notice to Defendant of Filing of Designation of Record and Statement of Points	58	44
Stipulation to Amend Designation and Include Additional Matters in Transcript on Appeal	59	45
Order Extending Time to File Transcript	61	46
Amended Designation of Matters To Be Contained in Transcript on Appeal	61	46
Clerk's Certificate to Transcript [omitted in printing]	63	48
Appearances of counsel [omitted in printing]	65	48
Order of submission	67	48
Opinion, Sanborn, J.	68	49
Judgment	76	54
Clerk's certificate [omitted in printing]	77	54
Order allowing certiorari	78	54

A [Caption omitted.]

1 In The District Court of the United States, for the District of Minnesota, Fourth Division

No. 884—Civil Action

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PLAINTIFF

vs.

WARNER HOLDING COMPANY, A CORPORATION, DEFENDANT

Order substituting Chester Bowles, Administrator, Office of Price Administration, in the place of Prentiss M. Brown, and granting Plaintiff leave to file Amended and Supplemental Complaint Filed Nov. 30, 1943

The above-entitled action came before the undersigned, Judge of the above-named Court, on the 27th day of November 1943, for hearing on the motion of the plaintiff for an Order substituting Chester Bowles, Administrator, Office of Price Administration, as plaintiff in place of Prentiss M. Brown, permitting plaintiff to serve and file an Amended and Supplemental Complaint, permitting plaintiff to examine the books of defendant and for a pre-trial conference. Ralph M. McCareins and Arnold Karlins appeared as counsel for plaintiff in support of said motion and R. H. Fryberger and M. R. Keith appeared as counsel for defendant in opposition thereto.

After hearing the argument and being advised in the premises, it is ordered,

1. That Chester Bowles, Administrator, Office of Price Administration, be substituted as plaintiff in this action in place of Prentiss M. Brown, and that the title of this action be amended accordingly;

2. That leave is hereby granted to the plaintiff to file the Amended and Supplemental Complaint placed before the Court at the hearing of this motion, the copy thereof served on defendant prior to the hearing of this motion to stand as served,
2 and the defendant to have ten days from the date hereof to answer said Amended and Supplemental Complaint;

3. That said motion with respect to plaintiff's request for an Order permitting plaintiff to inspect and examine the books of defendant is denied for failure to conform to Rule 34 of the Rules of Civil Procedure, without prejudice to a second application by the plaintiff to the Court for an examination of the books and records of defendant;

4. A ruling on said motion with respect to the pre-trial con-

ference therein requested is deferred until a ruling has been made on a second application of the plaintiff for an examination of the books and records of defendant.

Dated: 11/30/43.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In The District Court of the United States for the District of Minnesota, Fourth Division

[Title omitted.]

Amended and supplemental complaint

Filed Nov. 27, 1943

1. Jurisdiction of this action is conferred upon the Court by Section 205 (c) of the Emergency Price Control Act of 1942 (56 Stat. 23; Tit. 50 U. S. C. A. App. Sec. 901 (1942)), as amended (Pub. Law No. 729, 77th Cong. 2nd Sess. C 578) (Pub. Law No. 151, 78th Cong. 1st Sess., July 16, 1943), hereinafter called the Act. Plaintiff brings this action under Section 205 (a) of the Act to enforce compliance with Section 4 (a) thereof.

2. At all times herein mentioned defendant was and is a corporation, organized under the laws of South Dakota and licensed to do business in Minnesota, with its office and principal place of business in Minneapolis, Minnesota.

3. On and after November 1, 1942, defendant, as owner and lessor, leased and let to tenants housing accommodations in the apartment buildings in the City of Minneapolis, Minnesota, known and numbered as follows:

Belvedere Apartments, 2896 James Avenue South.
Martinique Apartments, 2880 James Avenue South.
Vine Hall Apartments, 1412 LaSalle Avenue South.
125 Oak Grove Apartments, 125 Oak Grove Street.
El Capitan Apartments, 3210 Girard Avenue South.
Dupont Court Apartments, 1101–1105 West 28th Street.
Emerson Court Apartments, 1115–1125 West 28th Street.
Granada Apartments, 1456 Lagoon Avenue.

The housing accommodations in said apartment buildings consisted of rooms arranged as dwelling units, said buildings containing approximately 280 of such dwelling units.

4. Defendant, in the operation of said apartment buildings and in the collection of rents from its tenants thereof, has engaged and is about to engage in acts and practices which constitute and which will constitute a violation of Section 4 (a) of the Act in

that defendant has violated and is attempting to violate a regulation of the Office of Price Administration, to wit: Maximum Rent Regulation 53 (7 F. R. 8596) re-designated as Rent Regulation for Housing (8 F. R. 7322).

5. At all times on and after November 1, 1942, said Rent Regulation has established maximum rents for the use and occupancy of the housing accommodations owned and operated by defendant as aforesaid, and has prohibited defendant from demanding or receiving, and from offering, attempting or agreeing to demand or receive, rent for the use and occupancy of said housing accommodations in excess of the maximum rents established therefor by said Regulation.

6. On and after November 1, 1942, defendant, in violation of said Regulation and Section 4 (a) of the Act, demanded and received rents for the use and occupancy of housing accommodations in amounts in excess of the maximum established therefor by said Regulation. Attached hereto marked Exhibit A, and hereby made a part hereof, is a schedule setting forth a description of housing accommodations, the maximum rents established therefor by said Regulation, the rents demanded and received by defendant in violation of said Regulation for the use and occupancy of said housing accommodations, and the date and number of violations of said Regulation resulting therefrom.

7. On and for some time prior to June 29, 1943, defendant had knowledge of amounts it had unlawfully collected from tenants in excess of the maximum rents established by said Regulation and of the persons from whom such amounts had been so collected. Defendant has failed and refused and still fails and refuses to tender to the persons so known by defendant to be entitled thereto, a refund of the amounts unlawfully collected by defendant in excess of the maximum permitted by said Regulation.

8. At all times on and after November 1, 1942 said Regulation required defendant to file with the Area Rent Office at Minneapolis, Minnesota, on or before December 15, 1942, or within thirty days after the property was first rented, a registration statement for each housing accommodation rented or offered for rent by defendant, and to specify in said registration statement the maximum rent provided by said Regulation for the dwelling unit described therein. With respect to housing accommodations rented on March 1, 1942, defendant was required by said Regulation to set forth in said registration statement as the maximum rent for such housing accommodations the rent for such accommodations on that date. At all times herein mentioned, it was a practice of defendant in the operation of the said apartment buildings to rent dwelling units therein to tenants under agreements providing for a monthly gross rent and containing a provision described in said agreements as a "discount clause" and providing for a

"discount" on payment of the rent within a stipulated time after its due date, said agreements being in form similar to the lease marked Exhibit B, which is attached hereto made a part hereof for the purpose of showing the form of said agreements. With respect to housing accommodations rented by defendant on March 1, 1942 under rental agreements similar to Exhibit B, defendant,

in violation of said provisions of said Regulation and Section 4 (a) of the Act, filed registration statements with said Area Rent Office showing only the gross rent stated in the leasing agreements and failed and refused and still fails and refuses to set forth in said registration statements, the net rent payable within the discount period or the provision for a "discount." Defendant's practice of filing registration statements without showing the net rent or the "discount" provision prevailing on the base date prevents the use of the registration statement as an accurate source of information for ascertainment of the maximum rent in the administration of said Regulation, and defendant, by the use of said practice, has evaded and is attempting to evade the provisions of said Regulation establishing maximum rents.

9. At all times on and after November 1, 1942, said Regulation has provided that so long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal, or exclusion from possession, except on the grounds and in the manner stated in said Regulation. Defendant, in violation of the provisions of said Regulation with respect to the eviction of tenants and the establishment of maximum rents, and in violation of Section 4 (a) of the Act, has made demands on tenants, in form the same as or similar to the letter a copy of which is attached hereto marked Exhibit C and hereby made a part hereof, wherein defendant has undertaken and attempted, by conditioning its demands on an assumed unconstitutionality of the Emergency Price Control Act of 1942 and said Regulation, to impose on tenants a choice of vacating the housing accommodations rented from defendant or continuing their occupancy by becoming obligated to defendant to pay rent and penalties in excess of the maximum rent established by said Regulation.

Wherefore, the plaintiff demands:

1. A preliminary and permanent injunction enjoining defendant, its agents, servants, employees and all persons in active concert or participation with it from, directly or indirectly,

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration;

(c) making any demand on any tenant of housing accommodations in which demand defendant undertakes or attempts to impose an obligation on the tenant conditioned on any assumption that the Emergency Price Control Act of 1942 or the Rent Regulation for Housing is or will be declared unconstitutional or void;

and ordering and directing defendant

(d) to file with the Area Rent Office at Minneapolis, Minnesota, within thirty days after the service of the Writ of Injunction, a registration statement, on the form provided therefor by said Office, for each housing accommodation now owned by defendant and rented on March 1, 1942 under a rental agreement providing for a monthly gross rent and containing a provision for a discount on payment of the rent within a stipulated time after its due date, and to set forth in the registration statement so filed the information required by the Rent Regulation for Housing and including the amount of the net rent payable within the discount period on the base date or the discount provision prevailing on that date;

(e) to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation.

2. And for such other relief as the Court may find necessary and appropriate to effectuate the purposes of the Emergency Price Control Act of 1942.

Dated November —, 1943.

GEORGE J. BURKE,
General Counsel.
ALEX ELSON,
Regional Attorney.
JOHN M. MANIERRE,
Regional Enforcement Attorney.
NOBEL SHADDUCK,
District Enforcement Attorney.
RALPH M. MCCAREINS,
Senior Enforcement Attorney.
ARNOLD A. KARLINS,
District Rent Attorney.
c/o Twin Cities District Office, Office of Price Administration, W-1200 First National Bank Building, Saint Paul, Minnesota.
Attorneys for Plaintiff.

[Duly sworn to by R. M. McCarvins; jurat omitted in printing.]

8 *Exhibit "A"*

I Description of Accommodations:	2806 James Avenue South, Minneapolis, Minnesota—Belvedere				
II Apartment No.	#107	#201	#306	#208	#305
III Matimum Rent:	$50.00	$50.00	$43.00	$53.50	$43.00
Which was amount demanded or received on:	Mar. 1, '42	Mar. 1, '42	Feb. 1, '42	June 1, '42	Mar. 1, '42
IV Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Nov. 1, '42	Nov. 1, '42	Nov. 1, '43	Nov. 1, '42	Nov. 1, '42
To:	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
To	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
To	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
To	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
To	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	Apr. 1, '43	Apr. 1, '43		Apr. 1, '43	Apr. 1, '43
To	Apr. 30, '43	Apr. 30, '43		Apr. 30, '43	Apr. 30, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	May 1, '43	May 1, '43		May 1, '43	May 1, '43
To	May 31, '43	May 31, '43		May 31, '43	May 31, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	June 1, '43	June 1, '43		June 1, '43	June 1, '43
To	June 30, '43	June 30, '43		June 30, '43	June 30, '43
Rent Received:				$59.00	
For Period: From				July 1, '43	
To				July 31, '43	

Exhibit "A-1"

I Description of Accommodations:
II Apartment No:
III Maximum Rent:
Which was amount demanded or received on
IV Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To

#1425 LaSalle Ave., Mpls. Vine Hall	
#101	#208
$50.00	$30.00
Mar. 1, '42	Mar. 1, '42
$53.50	$28.75
Nov. 1, '42	Nov. 5, '42
Nov. 30, '42	Nov. 30, '42
$53.50	$34.50
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$53.50	$34.50
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43

#3210 Girard Ave. So., Mpls. El Capitan	
#103	#304
$55.00	$55.00
Mar. 1, '42	Mar. 1, '42
$56.50	$56.50
Nov. 1, '42	Nov. 1, '42
Nov. 30, '42	Nov. 30, '42
$56.50	$56.50
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$56.50	$56.50
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43
$56.50	$56.50
Feb. 1, '43	Feb. 1, '43
Feb. 28, '43	Feb. 28, '43
$56.50	$56.50
Mar. 1, '43	Mar. 1, '43
Mar. 31, '43	Mar. 31, '43
$56.50	$56.50
Apr. 1, '43	Apr. 1, '43
Apr. 30, '43	Apr. 30, '43
$56.50	$56.50
May 1, '43	May 1, '43
May 31, '43	May 31, '43
$56.50	$56.50
June 1, '43	June 1, '43
June 30, '43	June 30, '43

#1101-1105 W. 28th St., Mpls. Dupont Court	
#102	#104
$45.00	$43.00
Mar. 1, '42	Mar. 1, '42
$52.50	$58.00
Nov. 1, '42	Nov. 1, '42
Nov. 30, '42	Nov. 30, '42
$52.50	$58.00
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$52.50	$58.00
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43
$52.50	$58.00
Feb. 1, '43	Feb. 1, '43
Feb. 28, '43	Feb. 28, '43
$52.50	$58.00
Mar. 1, '43	Mar. 1, '43
Mar. 31, '43	Mar. 31, '43
$52.50	$58.00
Apr. 1, '43	Apr. 1, '43
Apr. 30, '43	Apr. 30, '43
$52.50	$58.00
May 1, '43	May 1, '43
May 31, '43	May 31, '43
$52.50	$58.00
June 1, '43	June 1, '43
June 30, '43	June 30, '43

10 *Exhibit "A-2"*

I	Description of Accommodations:	#123 Oak Grove, Minneapolis Bronzin	#1456 Lagoon Ave., Mpls. Granada		#1117-1125 W. 28th St., Mpls. Emerson Court
II	Apartment No.:	#103	#87	#305	#201
III	Maximum Rent:	$42.50	$46.00	$47.50	$53.50
	Which was amount demanded or received on:	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42
IV	Rent Received:	$45.00	$47.50		$62.50
	For period: From	Nov. 1, '42	Nov. 1, '42		Nov. 1, '42
	To	Nov. 30, '42	Nov. 30, '42		Nov. 30, '42
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
	To	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
	To	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
	To	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
	To	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43
	To	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	May 1, '43	May 1, '43	May 1, '43	May 1, '43
	To	May 31, '43	May 31, '43	May 31, '43	May 31, '43
	Rent Received:	$45.50	$47.50	$52.50	$62.50
	For period: From	June 1, '43	June 1, '43	June 1, '43	June 1, '43
	To	June 30, '43	June 30, '43	June 30, '43	June 30, '43

11 *Exhibit "A-3"*

I	Description of Accommodations:	#2880 James Avenue South, Minneapolis, Minnesota—The Martinique				
II	Apartment No:	#103	#201	#206	#304	#205
III	Maximum Rent:	$35.00	$52.50	$30.00	$42.50	$43.50
	Which was amount demand or received on:	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42
IV	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Nov. 15, '42	Nov. 1, '42	Nov. 1, '42	Nov. 1, '42	Nov. 1, '42
	To	Dec. 14, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Dec. 15, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
	To	Jan. 14, '43	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Jan. 15, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
	To	Feb. 14, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
	Rent Received:	$40.00	$68.50	$40.00	$47.50	$47.50
	For period From	Feb. 15, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
	To	Mar. 14, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Mar. 15, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
	To	Apr. 14, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
	Rent Received	$40.00	$58.50	$46.50	$47.50	
	For period: From	Apr. 15, '43	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43	
	To	May 14, '43	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43	
	Rent Received:	$40.00	$58.50	$46.50	$47.50	
	For period: From	May 15, '43	May 1, '43	May 1, '43	May 1, '43	
	To	June 14, '43	May 31, '43	May 31, '43	May 31, '43	
	Rent Received:	$40.00	$58.50	$46.50	$47.50	
	For period: From	June 15, '43	June 1, '43	June 1, '43	June 1, '43	
	To	July 14, '43	June 30, '43	June 30, '43	June 30, '43	

Total number of violations, Exhibit A to A-3, inclusive—144.

12 *Exhibit "B".*

This Indenture, Made this 4th day of August, 1941 by and between Warner Holding Company, party of the first part, Lessor, and J. T. Morgan, party of the second part, Lessee.

Witnesseth, That said party of the first part, in consideration of the rents and covenants hereinafter mentioned, to be paid and performed by said party of the second part, does hereby Demise, Lease and Let unto the said party of the second part, and the said party of the second part does hereby hire and take from the said party of the first part the following described premises, situate in the City of Minneapolis, County of Hennepin and State of Minnesota to-wit:

Apartment numbered 201 on second floor of the Martinique, situate 2880 James Ave. So. to be occupied as and for a dwelling, and for no other purpose.

To Have and to Hold, The above rented Apartment to the said party of the second part, his heirs and assigns, for and during the full term of One year from and after the first day of September, 1941, to and until the last day of August, 1942.

And the said party of the second part, for himself, his heirs and assigns, agrees to and with the said party of the first part, to pay him, his heirs or assigns, as rent for the above mentioned Apartment, the sum of Six Hundred Ninety and No 100 Dollars, in equal monthly payments of Fifty Seven and 50/100 Dollars, per month, from September 1, 1941 (See discount clause below) payable in advance at the office of Warner Holding Company, 1224 Baker Building, Minneapolis, Minnesota, on the first day of each and every month for and during the full term of this Lease.

Said Party Of The Second Part Also Covenants And Agrees As Follows: To comply with any printed or typewritten regulations now made and posted in said premises, or hereafter to be made and so posted, relating to the use of said building. To keep premises in as good condition as they now are, or may be put into by said party of the first part, ordinary wear resulting from careful
13 usage and damage by the elements without fault on part of party of the second part, alone excepted. To drive no nails or screws, or their equivalent, into the walls, ceiling, woodwork or floors of said premises, or make any change in the internal structure of said building, or any room therein.

To not sell or assign this lease or sublet the said premises, or any part thereof, to any person without first obtaining the written consent of said party of the first part. To use gas stoves only for cooking; all gas for fuel or light to be paid for by party of the second part. To permit no noise or nuisance whatever on said premises to the disturbance of other tenants, or keep any animals

in said premises. To comply in all respects with any policy of insurance now upon or covering said premises, or which may hereafter be put upon the same, or permit anything to be done at or within said leased premises which shall vitiate or increase the current rate of insurance thereon, or upon property kept therein.

To take good care of and keep said premises so as not to endanger the same, or any co-tenants therein.

To make no claim against said Lessor for or on account of any loss or damage sustained by fire or water, deluge or overflow, howsoever coming or being, within said premises, or for loss of any articles, from any cause, from said building or premises.

No repairs or alterations shall be made except with the full knowledge and consent of said party of the first part. Lessee to be responsible for and mend at his own proper cost, any and all breakage or damage done to any part of premises hereinbefore mentioned, of whatever nature. To replace with as good quality and size, and make good at his own expense, any glass broken on said premises during the continuance of this lease (said glass now being whole).

To care for waxed floors in said apartments properly, allowing no water to be used thereon.

To allow no baby-carriages or go-carts or other obstructions to be left standing in the public halls or vestibules in said building.

To permit party of the first part, by his officers or agents,
14 to enter said premises at all reasonable times, to view them or to show them to parties wishing to lease or make improvements thereon; and at the expiration of the time herein recited quietly yield and surrender said premises to said party of the first part, his heirs or assigns, in such condition as herein covenanted.

Provided, That if said premises shall be destroyed by fire, this lease shall terminate, but without rebate of rent paid, or due and unpaid; that should party of second part, his heirs, executors, administrators or assigns, fail to make the above mentioned payments as herein specified, or to pay any of the rent aforesaid when due, or shall fail to fulfill any of the covenants or agreements herein contained, then and in that case it shall be lawful for the said party of the first part, his heirs or assigns, to declare this lease at an end, and re-enter and take possession of said premises, and to hold and retain the same fully and absolutely without such re-entry working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the second part during the full term of this lease.

It is expressly agreed that there shall be no surrender of said premises before the expiration of this lease by party of the second part, except by written consent thereto, hereon, signed by party

of the first part. Second party further agrees to give party of the first part written notice forty days before the expiration of this lease of his intention to vacate at the end of this lease, otherwise party of the first part will have option of continuing this lease for one year from such expiration without notice to party of the second part.

Gas range furnished by first party to be kept in order by second party. Party of first part agrees to furnish heat for heating said premises from October to May as necessary.

Also to furnish lighting fixtures to all rooms, also window shades and screens (except hall windows), now being whole, and to be replaced if broken by second party. Hot and cold water to be furnished by party of the first part, but in case of waste or unnecessary use it shall be paid for thereafter by second party at regular rate charged.

15 Discount Clause: It Is Understood And Agreed that in the event the lessor shall receive from the party of the second part, lessee, the monthly rental on or before the 10th day of the month in which it is due that the lessee herein may deduct a discount of $5.00 per month, making net rental $52.50 if paid on or before the 10th day of the month in which it is due.

This lease is null and void providing the state or municipal subsidies exercise their rights of eminent domain.

It Is Understood And Agreed that lessee will make no claim, and lessee hereby expressly waives any and all claims against said lessor for or on account of any personal injury sustained, or any loss or damage to property, caused by fire, water, deluge or overflow, or explosion, howsoever arising or caused or being within said premises, or for loss of any articles by theft, or from any cause, from said premises or building.

It is further understood and agreed that the party of the second part, lessee, agrees to pay a deposit of 50 cents for each key, which will be refunded upon receipt of the keys at the end of this lease providing no rent is due and unpaid.

It is understood that the above apartment is furnished per inventory.

It is understood and agreed that the lessee pay pro rata extra for the month of August, 1941, from the day they move in, which is from August 6, 1941, as an additional consideration.

In Testimony Whereof, Both parties have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of
Lois G. Hudson.
Lois G. Hudson.

Warner Holding Company,
By H. L. Warner, Pres. [SEAL]
J. T. Morgan [SEAL]

16 Personal Acknowledgment

State of _____,
County of _____—ss.:
On this _____ day of _____, 19____, before me personally appeared _____, to me known to be the person____ described in and who executed the foregoing instrument, and acknowledged that _____he_____ executed the same as _____ free act and deed.
[SEAL] _____Notary Public,
_____County_____
My commission expires _____, 19____

Acknowledgment of Corporation

State of _____,
County of _____—ss.:
On this _____ day of _____, 19____, before me personally appeared _____ to me personally known, who being duly sworn, did say that he is the _____ of _____, a corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed by authority of its Board of Directors; and the said _____ acknowledged said instrument to be the free act and deed of said corporation.
[SEAL] _____
Notary Public,
_____County_____
_____
My commission expires _____, 19____

Assignment

Consent is herewith given for the _____
(Insert, Assign or Underlet)
of the within Lease to _____.
Dated _____, 19____ _____

17 APARTMENT LEASE FROM WARNER HOLDING COMPANY LESSOR, TO J. T. MORGAN, LESSEE

Amount, $57.50 per month payable Net $52.50 if paid on or before 10 of the month in which it is due, at 1224 Baker Building.

Apartment #201

The Martinique

Sept. 1, 1941 to Aug. 31, 1942

Rider to Lease Between the Warner Holding Company, Lessor, and J. T. Morgan, Lessee.

It is understood and agreed that in case the lessee is transferred by his employer permanently from the twin city area this lease is null and void so far as expiration is concerned providing no rent is due and owing and sixty days written notice instead of the Minnesota statuatory thirty days is given and rent is paid to the expiration of said sixty days.

Exhibit "C"

WARNER HOLDING COMPANY

1922-24-26 Baker Building

MINNEAPOLIS, MINNESOTA

SEPTEMBER 24, 1943.

MRS. ELIZABETH HOFFMAN,
Apartment #111,
1101 West 28th Street, Minneapolis, Minnesota.

DEAR MADAM: Assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated October 31, 1943.

18 We have claimed and believe that the Emergency Price Control Act of 1942 as respects rents and the confiscatory and ridiculous regulations issued by the Administrator and promulgated under and by virtue of the said Act, are unconstitutional and void. Litigation is pending whereby we are testing the legality of the Act. It is our intention to present the matter to the highest court in the land.

This is to notify you that if the Emergency Price Control Act of 1942 as respects rents is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond October 31, 1943, that you are obligated to us for ten months' rent at a cost to you of $900.00, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same, payable in installments of $45.00 each and every month if paid later than the 5th of the month in which the installment is due or $40.00 each and every month if paid on or before the 5th of the month

in which it is due, up and until July 1, 1944, when the balance of $900.00 will be due and payable for the period October 31, 1943 to August 31, 1944.

As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes, and notices in the matter. However, we have no desire to have you continue residing in our premises, and much prefer that you vacate the apartment on October 31, 1943, as requested.

Yours truly,

WARNER HOLDING COMPANY,
(S) H. L. WARNER, *Pres.*

[File endorsement omitted.]

Answer to amended and supplemental complaint.

(Filed Dec. 18, 1943)

Comes Now the defendant and for its Answer to the Amended and Supplemental Complaint:

I

Admits that if the Emergency Price Control Act of 1942 is constitutional, jurisdiction of this action is conferred upon the Court by Section 205–C thereof.

19

II

Defendant admits the allegations of Paragraph II of the Complaint and admits that on and after the 1st day of November 1942, defendant was the owner of the housing accommodations in the apartment buildings described in Paragraph III of the Complaint except that defendant denies that at the time of the commencement of this action it was the owner of the premises known as Vine Hall Apartments.

III

As to the allegations of Paragraphs V, VI, VII, VIII, and IX of the Amended and Supplemental Complaint, defendant alleges that the Emergency Price Control Act of 1942 as amended hereinafter, referred to as the Act, and the rules, regulations and order promulgated thereunder by the said alleged Administrator thereof, is and are unconstitutional and void, and the terms and provisions and the manner and means employed therein to affect the alleged purposes thereof and all orders and regulations promulgated pursuant thereto are contrary to the terms and provisions of the Constitution of the United States of America in this—

(a) They and each of them violate and are repugnant to Article I, Section 1 of said Constitution in that among other things—

(1) The said Act constitutes an unlawful, unwarranted and unauthorized delegation of Power by Congress to the Administrator therein referred to;

(2) The Congress thereby has delegated powers to an Administrator without providing in the Act for adequate, sufficient or reasonable standards, or any standards at all, for said Administrator's actions and his right and power to act in the administration of the Act;

(3) Thereby the Congress has impowered an alleged Administrator to make and enact laws by regulation and order without adequate, reasonable or sufficient control retained over or limitations imposed on him in his tenure in office, his activities or non-activities and the extent of power he is authorized to employ;

(4) Thereby the Congress has unlawfully surrendered and transferred to said Administrator the power granted to it and it alone by the Constitution to enact legislation.

(b) They and each of them violate and are repugnant to Article I, Section 8 of said Constitution of the United States in that, among other things—

(1) The Congress has exceeded its power and authority granted to it by said section;

(2) The Congress has dealt with a subject embracing Intra State Commerce in a manner and to an extent that is unwarranted, unnecessary, improper and beyond the scope of the powers delegated to Congress directly or by implication by the provisions of said Section 8;

(3) The Congress has surrendered and delegated to an Administrator the power to make laws which it and it alone can determine to be necessary and proper for carrying into execution the powers given to Congress under said Section 8 and has left to the discretion of said Administrator not only the necessity and propriety of such laws, the determination of which are reserved to the Congress alone, but has delegated to him the determination of context of the said laws themselves;

(4) Thereby the Congress has impowered an alleged Administrator to make and enact laws by regulation and order without adequate, reasonable or sufficient control retained over or limitations [impowed] on him in his tenure in office, his activities or non-activities and the power he is authorized to employ.

(c) They and each of them violate and are repugnant to the IVth, Vth and VIth Amendments to said Constitution in that, among other things—

(1) The Congress has thereby deprived the Defendant of his property without due process of law;

(2) The Congress thereby takes the Defendant's property for public use without just compensation and thereby causes confiscation without compensation;

(3) That the Act requires the Defendant to produce and
21 file papers, documents and reports that, without limits, may be prescribed by regulation and order in the sole discretion of an Administrator and thereby compells production of Defendant's private books and papers, to be used against him or his property in a criminal or penal proceeding or for a forfeiture and thereby compells him to give testimony against himself, or on his failure so to do, to suffer the penalties prescribed by the Act, all of which are against the spirit and meaning of said Amendments;

(4) The Act violates defendant's right to be secure in his person, house, papers, and effects against unreasonable searches and seizures, contrary to the provisions of said Amendments;

(5) The said Act fixes penalties for violation of provisions that are neither incorporated in the Act nor can they be found therein by any implication whatsoever;

(6) The Act deprives Defendant of his liberty and property without due process of law in that said Act affords Defendant no protection against arbitrary and capricious regulations and orders of the Administrator.

IV

That the Administrator, Office of Price Administration, his agents and employees, in administering said alleged Act with respect to the rights of defendant, have acted arbitrarily, without authority of law, without affording opportunity to defendant to be heard, and by reason thereof, they, and each of them, have made it impracticable and impossible, to the time of the commencement of this action, for defendant to comply with the applicable, pertinent, complicated and exacting requirements of the provisions of the Orders and Regulations which said Administrator has promulgated with respect to rent control in the district attempted to be designated as Minneapolis and St. Paul Defense Rental Area, although defendant, without admitting the validity of said law, rules and regulations, has attempted to reasonably comply therewith.

V

Defendant alleges that the rents collected by the defendant from said housing accommodations in said apartment buildings, whether as set forth in Exhibit "A" attached to
22 the Amended and Supplemental Complaint herein or other-

wise, were and are the fair and reasonable rents for said premises, were paid, charged for and collected by the defendant in accordance with the business practices of defendant which had been established long before the enactment of the alleged Act, were fair and reasonable charges for the use and occupancy of said respective housing accommodations and that insofar as regulations, orders and requirements promulgated by said Administrator are in conflict with and purport to compel a change in the business practices of said defendant, the same are void, contrary to the terms and provisions of said Emergency Price Control Act, and of no force and effect,

VI

Defendant admits that it has refused to refund to tenants who have complained that the rents collected by the defendant are contrary to the terms and provisions of said Act and said regulations, and has in good faith as it was its right to do, interposed defenses thereto where actions have been brought thereon and this defendant denies that this Court has jurisdiction to deprive this defendant of its right to in good faith contest on the merits any claims by any tenants made in said connection.

VII

Further answering, and particularly to Paragraph VIII of said Amended and Supplemental Complaint, defendant admits that in some instances in filing said registration statements it specified therein the rental as of March 1, 1942, as the gross rental received therefrom on said date; admits that it had the discount clauses in some of its leases as alleged in said paragraph and alleges the facts to be that the amount of said gross rent of said premises as of the 1st day of March 1942, was the amount of rental charged for the said housing accommodations and denies that any registration statement filed by the defendant in connection with the allegations of Paragraph VIII or otherwise have been filed by defendant for the purpose of attempting to evade the provisions of said regulations.

VIII

Defendant admits that it wrote and mailed to two (2) tenants the letter, a copy of which is attached to the Com-
23 plaint and marked Exhibit "C," and denies the other allegations of said Paragraph IX of said Amended and Supplemental Complaint.

IX

That the Plaintiff has commenced this action prematurely and before giving the defendant an opportunity to be heard or to present facts showing that it had not violated said alleged Act, Orders and Regulations and that by reason of the premises the plaintiff does not come into a Court of Equity with clean hands.

X

Defendant denies that it has violated any of the provisions of said Act, and denies it has violated any of the provisions of said Orders and Regulations within the meaning and intent thereof fairly and reasonably interpreted and administered and alleges that the said Administrator, his agents and employees, have failed, refused and neglected to fairly and reasonably interpret and administer said Act, Orders and Regulations with respect to the rights of defendant.

Wherefore, Defendant prays the judgment and decree of this Court that said Amended and Supplemental Complaint be dismissed and Defendant have its costs and disbursements herein incurred.

M. R. KEITH,
305 South Fifth Street, Minneapolis, Minnesota,
R. H. FRYBERGER,
1110 Baker Building, Minneapolis, Minnesota,
Attorneys for Defendant.

Due service of the within answer to Amended and Supplemental Complaint is hereby admitted this 18th day of December 1943.

R. M. MCCAREINS,
One of Attorneys for Plaintiff.

[File endorsement omitted.]

24 In United States District Court

Amendment to prayer of amended and supplemental complaint
(Filed May 11, 1944)

Pursuant to the understanding with counsel for defendant permitting plaintiff to make the following amendment,

Plaintiff Hereby Amends the prayer of the Amended and Supplemental Complaint by striking out paragraph (e) therefrom and inserting in lieu thereof the following:

(e) to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, how-

ever, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation.

Dated: May 8, 1944.

ALEX ELSON,
Regional Attorney,
RALPH M. MCCAREINS,
District Enforcement Attorney,
ARNOLD A. KARLINS,
Chief Rent Attorney,
Attorneys for Plaintiff,
c/o Twin Cities District Office, Office of Price Administration, W-1200 First National Bank Bldg., St. Paul, Minnesota.

[File endorsement omitted.]

In United States District Court

Opinion of Court

(Filed Oct. 26, 1944)

This is a suit under the Emergency Price Control Act of 1942, section 205 (a) 50 U. S. C. A. App. section 925 (a), hereinafter called the Act, by the Administrator of the Office of Price
25 Administration to enforce compliance with the Act and the applicable price regulations. A preliminary injunction has been granted. See Brown vs. Warner Holding Co., 50 F. Supp. 593. Plaintiff also seeks an order compelling restitution to certain tenants of rents collected by defendant in excess of "ceilings". These questions present different considerations and will be discussed separately.

I. Injunction of Violations of the Act and Regulations

The pertinent provisions of section 205 (a) of the Act are:

"Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this act [see footnote], he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bonds."

The power of this court under this section has been carefully resolved in Hecht Co. vs. Bowles, 321 U. S. 321. The Supreme Court there held that although "the cessation of violations whether before or after the institution of a suit by the Administrator is no bar to the issuance of an injunction under section 205 (a)" (321 U. S. 327), the statute is not mandatory and the type of order and whether one should issue is within the discretion of the court in the exercise of its historic equity powers. This discretion must be exercised

"* * * in light of the large objectives of the Act. For the standards of the public interest, not the requirements of
26 private litigation, measure the propriety and need for injunctive relief in these cases. That discretion should reflect an acute awareness of the congressional admonition that 'of all the consequences of war, except human slaughter, inflation is the most destructive' (S. Rep. No. 931, supra, p. 2) and that delay or indifference may be fatal." (321 U. S. 331.)

With these principles in mind the facts of the case must determine whether plaintiff should be granted the relief asked. The following grounds are specified in the complaint: (a) demanding or receiving or attempting to demand or receive rents in excess of the maximum as prescribed by the regulations; (b) attempting to evict tenants in violation of the regulations; (c) failure to properly register rental units with the rent control office.

(a) Defendant is a corporation owning eight apartment buildings in the city of Minneapolis that are involved in these proceedings. The buildings contain approximately 280 rental units. The local rent control office made a "spot check" of defendant's books and records and prepared tabulations covering twenty rental units, some in each apartment building. The tabulations disclose collection of rents in excess of the ceiling in 155 instances. The amount of each overcharge varies from $1.50 to $16.50 per month and totals $807.75. It is conceded that these computations are correct.

Defendant's principal contention is that "in practically every instance" the apartment was rented under a lease for a definite term with a designated sum as rent for that term, and although this sum was payable monthly in advance, there can be no violation until defendant collects an amount in excess of the total specified in the lease on the base date. (The "base" or "maximum rent" date was March 1, 1942, for accommodations rented

---

Section 4 of the Act, 50 U. S. C. A. App. sec. 904 (a) provides:
"It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person * * * to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2 * * * or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing."

on that date, with other provisions for accommodations subsequently rented). Therefore, defendant contends that this action is premature. Defendant argues that as it had the established practice on the maximum rent date of renting on a contractual basis for a fixed term and amount, "maximum rent" as used in the regulations must be defined as the term total prescribed
27 in the lease and not the monthly instalment actually paid by the tenant. I cannot agree with this contention. There is no evidence in this case that any tenant paid his "rent" more than one month in advance. Although a tenant might have the right to pay for a full year in advance under his lease, I do not see what effect that would have on the rent ceiling unless on the maximum rent date some tenant had actually done so. The leases provided for monthly payments in specific amounts. These amounts were paid by the tenants and accepted by the landlord on a monthly basis and are controlling in determining the maximum rents. Although defendant marked its receipts "on account" of rent, it is apparent that monthly payments were considered as the "rent." The following rider is attached to one of the leases and will suffice:

"It Is Understood And Agreed that retroactive to November 1, 1942 to the expiration of the Office of Price Administration rent control act, your *rent* is hereby reduced $2.50 *per month*." [Italics supplied.]

Section 2 (h) of the Act as amended June 30, 1944, now reads:

"(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this act."

Defendant contends that under the above quoted provision, before it can be found in violation, there must be an affirmative finding by the Administrator that the monthly instalments under the term lease are the ceilings. This argument is predicated on the assumption that defendant is compelled to change its business practice of renting by leases for a fixed term with monthly instalment payments. This is not the case. Nothing in the statute or regulations compels defendant to abandon this practice so long as it does not increase the amount of the term total or the monthly
28 installments due above the provisions in the lease in effect on the maximum rent date. As there is no compulsion to change rental practices, there is no need for an affirmative finding by the Administrator in this case.

Even if defendant's contention were valid it has little factual basis here. On only four apartments was there a lease during both the base and violation periods. The later leases all showed increases both in the term total and the monthly payments. Whatever definition might be given to "maximum" rent in these cases, the execution of the leases and the collection of the monthly instalments under them were violations of rent control. On ten apartments there were no leases on the maximum rent date although there were during the violation period, all calling for higher monthly payments than the maximum. On at least two apartments there were no leases either on the maximum rent date or during all or part of the violation period. To these situations defendant's argument is not applicable.

Defendant introduced testimony for several days including some 184 exhibits, consisting of correspondence, leases, petitions for adjustments in rent, registration forms, evidence of defendant's rental practices such as charging more for additional occupants including infants, evidence of improvements, redecorating, and of continued jousting with the rent control office. This mass of evidence was marshalled with commendable thoroughness and ably presents defendant's position that in many instances an increase in rental was justified because of increased services and improvements. Whatever views this court might have on these problems, the maximum rent on any particular dwelling unit is determined by the Administrator of the Office of Price Administration and the regulations issued pursuant to the Emergency Price Control Act. Judicial review of these determinations is exclusively vested in the Emergency Court of Appeals and the Supreme Court of the United States by section 204 of the Act, 50 U. S. C. A. App. section 924. This court has no jurisdiction to pass upon the validity or effectiveness of regulations or orders promulgated pursuant to this Act. *Henderson* vs. *Kimmel*, D. C. Kans., 47 F. Supp. 635, *Henderson* vs. *C. Thomas Stores*, D. C. Minn., 48 F. Supp. 295. The record discloses that in comparatively few instances did defendant avail itself
29 of the procedure prescribed in section 203 of the Act, 50 U. S. C. A. App. section 923, for appeal from adverse determinations by the local area rent director, and in no instance did defendant seek judicial review by the Emergency Court of Appeals. In the few cases where an appeal was taken defendant was not entirely without success. Defendant's president explained the failure to protest other adverse determinations by testifying that he felt it would be useless and that he felt "frustrated." In any event the determination by the regulations and the Administrator of the ceilings for the rental units involved

must be accepted as final in this court. It is therefore beyond dispute that these violations occurred.

(b) The second count charges defendant with "evicting or attempting to evict tenants" in violation of the regulations. There is no evidence of actual evictions and the attempts consisted of a series of letters written by defendant to various tenants in September and October, 1943, some time after the preliminary injunction was effective. The letters are similar in wording and tone. The following excerpt is illustrative:

"Inasmuch as we require to obtain an apartment for the writer's daughter * * *, and assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated November 30, 1943.

* * * * * *

"This is to notify you that if the Emergency Price Control Act of 1942, as respecting rents, is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond November 30, 1943, that you are obligated to us for eleven months' rent at a cost to you of $1,200, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same. * * *

"As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes and notices in the matter.

"If you elect to remain in the premises in spite of this notice, we require you to furnish us with suitable financial guarantee satisfactory to us on demand.

"However, we have no desire to have you continue to reside in our premises, and much prefer that you vacate the apartment on November 30, 1943, as requested."

Section 205 (a) of the Act, 50 U. S. C. A. App. 925 (a) gives the Administrator the right to seek an injunction for any violation of section 4 of the Act. Section 4 (a) [see footnote, supra] defines as unlawful any "*attempt*" * * * to do any of the foregoing.", Section 1388.286 (a) of Maximum Rent Regulation 53 states:

"So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession *or otherwise*, nor shall any person *attempt* such removal or exclusion from possession, * * *." [Italics supplied.]

In providing for injunctive relief for attempted violations the act and regulations are consistent with historic equity practice.

The purpose and intent of these letters is self-evident. The tenant is told to move or if the Act is held invalid he will become liable to defendant for a sum varying from $750 to $1,200 plus 40% attorney's fees in addition to the maximum rent. This is clearly an attempt to force the tenant to move or gamble with the landlord at the latter's terms upon the validity of the law. The uncertain position of the tenant upon the receipt of such a letter and the "pressure" on him to move can easily be imagined. My conclusion is that these letters were attempts at eviction without compliance with the regulations.

The letters are also a violation of the spirit of the injunction issued by this court June 29, 1943. Defendant was therein enjoined "directly or indirectly, from demanding or receiving, or attempting to demand or receive, rent" above the maximum. By conditioning its demand upon the invalidity of the Act defendant is not immune from the consequences of the attempt. Al-
31 though the injunction was not technically violated, the incident is indicative of defendant's attitude and persuasive on the question of the propriety of making the injunction permanent.

The failure to file proper registration forms was a matter of much controversy at the trial. Practically all of the leases contain a discount clause. That is, the gross amount was specified as the monthly payment with a provision for a $5.00 discount if paid on or before a certain date of the month. On the registration forms in the spaces provided for the rent on March 1, 1942 (the base date if the premises were then rented) and for the "Maximum Legal Rent", defendant inserted the gross monthly payment and added "as per lease" without specific mention of the discount clause or its terms. As there is no space specifically provided for a discount clause, defendant contends there has been no violation and can be none until such a form is provided. Plaintiff contends, with justification, that defendant's registrations do not disclose sufficient information to ascertain the ceiling. Defendant counters that there is no obligation to disclose the "net" rent and that "maximum" can mean only the "gross" rent.

Section 302 (g) of the Act, 50 U. S. C. A. App. section 942 (g) defines rent:

"The term 'rent' means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations."

Section 1388.293 (10) of Maximum Rent Regulation 53 (7 Fed. Reg. 8596) defines the term:

"The term 'rent' means the consideration, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of housing accommodations * * *."

It should be apparent that the discount clause is part of the consideration received for rent within the meaning of these definitions and must be taken into consideration in determining the maximum rent where such an agreement was in effect on the maximum rent date. The situation could and should be disclosed on the registration form. This is not the insurmountable
32 obstacle that defendant contends it is. For example, in the appropriate space the maximum monthly rental could be stated:

"$50.00
$45.00, if paid on or before the 5th of the month."

This is simple and clearly discloses the rental terms.

Enough has been recited to show that violations occurred. The remaining consideration is whether there is likelihood of their resumption if the present injunction is dissolved. The violations continued for four and one-half months, from the time the Act became effective until the temporary injunction issued. Although almost a year passed before this trial there was no evidence that defendant had refunded or intended to refund any of the overcharges. The attitude of defendant's president as exemplified by his testimony and by numerous letters and petitions over his signature is one of belligerence and antagonism toward everything connected with rent control. In writing letters to tenants above referred to he came perilously close to contempt of this court. The[illegible] is nothing in this record to lead me to believe defendant will voluntarily comply with the act and regulations. The situation is almost the antithesis of that described in Hecht Co. vs. Bowles, 321 U. S. 321, where the violations were inadvertent and were corrected as soon as discovered and where every cooperation was given to the enforcing officials. In passing, as bearing upon many of the activities and some of the issues here involved, the court would suggest a reading of Henderson vs. Morgan, 54 F. Supp. 441.

It is the opinion of this court that the injunction should be made permanent with an additional prohibition against evictions or attempted evictions, and an order that within sixty days registration forms be filed substantially in accordance with this memorandum.

II. Restitution of Overcharges to Tenants

Plaintiff seeks to have the order compel restitution of overcharges to all tenants excepting those who have commenced a triple damage action against defendant under section
33 205 (e) of the Act. The question is squarely presented as to whether this court has the power to grant such relief in a suit by the Administrator. The question is a new one and

no case in point has been called to my attention. Plaintiff relies principally upon an analogy to the enforcement provisions of the Fair Labor Standards Act as interpreted in Walling vs. Miller, 8th Cir. 138 F. (2) 629, reversing Fleming vs. Miller, 47 F. Supp. 1004, decided by this court. That case involved a motion to vacate or modify a consent decree which included a provision for restitution of back wages to employees. This court modified only this part of the decree on the ground that section 16 (b) of the Fair Labor Standards Act of 1938, 29 U. S. C. A. section 216 (b), gave employees the exclusive right of action to recover unpaid wages and therefore there was a lack of jurisdiction to order restitution in a suit by the Administrator under section 17 of that Act.

In reversing this holding, the Circuit Court of Appeals (Walling vs. Miller, supra) pointed out that at the time the consent decree was entered into this court had jurisdiction of both the parties and the subject matter; it was so found and defendants did not challenge this finding on appeal. Therefore, the inherent power of this court was not involved but only a question going to the merits, i. e., the Administrator's capacity as plaintiff. It was held that by entering into the consent decree, defendants had waived the right of the Administrator to attack the modifying order. A careful reading of the opinion leaves no doubt that the Circuit Court of Appeals did not decide or intend to decide that the Administrator was authorized to bring a restitution suit. It is even stated that the contention that he has no such authority "may be sound" (138 F. 2nd 632). That this was the intention of the court is shown by Judge Woodrough's concurring opinion. He was of the view that an employer was in violation of the Act as long as he wrongfully withheld wages due and that Section 17, 29 U. S. C. A. 217, giving the United States District Court's power to "restrain violations" included the power to order restitution. He points out that the Administrator represents the public interest, and that the employees also have a private right to recover back wages is immaterial. Plaintiff adopts this reasoning in the case at bar by way of analogy. But no analogy exists be-
34 cause the majority opinion does not hold that the right of restitution under the Fair Labor Standards Act is lodged in this Court.

Section 205 (e) of the Act provides a remedy which I believe was intended to be exclusive of other remedies. It is there provided that one who buys a commodity sold in violation of a price ceiling, other than in the course of trade or business (the definition includes tenants of housing accommodations in defense rental areas):

"may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorneys' fees and the costs as determined by the court."

If such buyer or tenant is not entitled to bring such action the Administrator is given authority to bring it on behalf of the United States. Congress was careful to provide that no landlord or seller of any commodity could violate price ceilings without subjecting himself to these stringent penalties. If it were the intent of Congress to give the Administrator the right to seek an order for restitution in a case where the purchaser or tenant also had a right of action for treble damages, section 205 (e) would have been the logical section wherein to express such intent.

Plaintiff finally relies on the language of section 205 (a) wherein the Administrator is empowered:

"to make application to the appropriate court for an order enjoining such acts or practices, or *for an order enforcing compliance* * * * and upon a showing * * * a permanent or temporary injunction, restraining order, *or other order* shall be granted without bond." (50 U. S. C. A. App. section 925 (a)). [Italics supplied.]

Plaintiff argues that the underlined words are surplusage unless construed to refer to a type of relief corrective of past conduct as distinguished from the conceded power to enjoin future violations. In Hecht Co. vs. Bowles, 321 U. S. 321, the meaning of this language was considered. The Supreme Court said:

35 "Though the Administrator asks for an injunction, some 'other order' might be more appropriate, or at least so appear to the court. Thus in the present case one judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an order, moreover, would seem to be a type of 'other order' which a faithful reading of section 205 (a), would permit a court to issue in a compliance proceeding." (321 U. S. 328.)

In view of this language I do not believe an extension of the meaning of "other order" to include the kind of relief asked here is justified.

Defendant argues that granting restitution in this proceeding would be a denial of legal rights without a jury trial. There is some evidence in this case that in a treble damage action defendant

may have valid counter-claims against certain tenants for damage to or theft of its property. The tenants are not parties to this proceeding. One might well pose the question: Could this court, without a jury, adjudicate the amount of restitution in each of the twenty rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendant having an opportunity to interpose valid counter-claims as a defense?

My conclusion is that this court lacks the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator. I therefore do not reach the question of the propriety of such an order under the facts of this case.

The permanent injunction will issue in accordance with the conclusions expressed in part I of this memorandum.

36 This memorandum is made a part of the findings of fact and conclusions of law which will be filed herein. Exceptions will be preserved to all parties aggrieved.

Dated October 26, 1944.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In United States District Court

Findings of fact, conclusions of law and order for judgment

Filed Nov. 8, 1944

The above-entitled action came before the undersigned, Judge of this Court, on the eleventh day of May 1944 for trial of the issues of law and fact made by the pleadings. Ralph M. McCareins and Glenn Catlin appeared as attorneys for the plaintiff and R. H. Fryberger and Max R. Keith appeared as attorneys for the defendant. Following the trial of this action briefs were submitted by the respective counsel for the parties and the matter was orally argued before the Court. The Court on the evidence submitted by the parties and after considering the argument of counsel made and filed a Memorandum Opinion dated October 26, 1944, and made said Memorandum a part of these Findings of Fact and Conclusions of Law, and the Court now makes the following:

Findings of fact

1. At all times herein mentioned defendant was and is a corporation, organized under the laws of South Dakota and licensed to do business in Minnesota, with its office and principal place of business in Minneapolis, Minnesota.

2. On and after November 1, 1942, defendant, as owner and lessor, leased and let to tenants housing accommodations in the apartment buildings in the City of Minneapolis, Minnesota, known and numbered as follows:

Belvedere Apartments, 2896 James Avenue South; Martinique Apartments, 2880 James Avenue South; Vine Hall Apartments, 1412 LaSalle Avenue South; Bronzin Apartments, 125 Oak Grove Street; El Capitan Apartments, 3210 Girard Avenue South; Dupont Court Apartments, 1101–1105 West 28th Street; Emerson Court Apartments, 1115–1125 West 28th Street; Granada Apartments, 1456 Lagoon Avenue.

The Housing accommodations in said apartment buildings consisted of rooms arranged as dwelling units, said buildings containing approximately 280 of such dwelling units. The Vine Hall Apartments was sold by defendant on February 1, 1943, and defendant has had no interest therein since said date.

3. Maximum Rent Regulation 53 (7 F. R. 8596), redesignated as "Rent Regulation for Housing" (8 F. R. 7822), hereinafter referred to as the Regulation, at all times on and after November 1, 1942, has established maximum rents for the use and occupancy of the housing accommodations owned and operated by defendant as aforesaid, and has prohibited defendant from demanding or receiving or offering, attempting or agreeing to demand or receive rent for the use and occupancy of said housing accommodations in excess of the maximum rents established therefor by said Regulation.

4. On and after November 1, 1942, defendant demanded and received rents for the use and occupancy of said housing accommodations in amounts in excess of the maximum established therefor by said Regulation. Exhibit "A", hereto attached and hereby made a part hereof, sets forth the amounts of rent so collected in excess of the maximum rent for twenty (20) of said two hundred and eighty (280) dwelling units, as shown by a "spot check" of said two hundred and eighty (280) dwelling units. This finding is to be understood as an adjudication between the plaintiff and defendant herein and not between the defendant and the tenants named in Exhibit "A."

5. On and for some time prior to June 29, 1943, defendant had knowledge of amounts it had collected from tenants in excess of the maximum rents established by said Regulation and of the persons from whom such amounts had been so collected. Defendant has failed and refused and still fails and refuses to tender to the persons so known by defendant to be entitled thereto, a refund of amounts so collected in excess of the maximum permitted by said Regulation.

38 6. At all times on and after November 1, 1942, said Regulation required defendant to file with the Area Rent Office at Minneapolis, Minnesota, on or before December 15, 1942, or within thirty days after the property was first rented, a registration statement for each housing accommodation rented or offered for rent by defendant, and to specify in said registration statement the maximum rent provided by said Regulation for the dwelling unit described therein. With respect to housing accommodations rented on March 1, 1942, defendant was required by said Regulation to set forth in said registration statement as the maximum rent for such housing accommodations the rent for such accommodations on that date. At all times herein mentioned, it was a practice of defendant in the operation of the said apartment buildings to rent dwelling units therein to tenants under agreements providing for a gross rent and containing a provision described in said agreements as a "Discount Clause" and providing for a "discount" on payment of the rent within a stipulated time after its due date. With respect to housing accommodations rented by defendant on March 1, 1942, under rental agreements providing for such a discount, defendant filed registration statements with said Area Rent Office showing only the gross rent stated in the leasing agreement and failed and refused and still fails and refuses to set forth in said registration statements the net rent payable within the discount period or the provision for a "discount." Defendant's practice of filing registration statements without showing the net rent or the "discount" provision prevailing on the base date prevents the use of the registration statement as an accurate source of information for ascertainment of the maximum rent in the administration of said Regulation.

7. At all times on and after November 1, 1942, said Regulation has provided that so long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, except on the grounds and in the manner stated in said Regula-

39 tion. Defendant has made demands on tenants in at least eight (8) different instances to vacate the premises of defendant, said demands being by letter and in from the same or similar to the letter, a copy of which is attached hereto, marked Exhibit "B" and hereby made a part hereof.

Conclusions of law

1. Jurisdiction of this action is conferred upon the Court by Section 205 (c) of the Emergency Price Control Act of 1942, as amended, hereinafter referred to as the Act.

2. Defendant has engaged in acts and practices which constitute a violation of Section 4 of the Act, in that

(a) defendant has demanded and received rent for housing accommodations in violation of said Regulation;

(b) defendant has attempted to evict tenants in violation of said Regulation;

(c) defendant has failed to file with the Area Rent Office, registration statements for housing accommodations showing the discount provision of rental agreements determining the maximum rent.

3. The Court, in this action, lacks the power to make an order requiring defendant to tender to persons, a refund of amounts collected by defendant as rent, in excess of the maximum established by said Regulation.

4. Plaintiff is entitled to a permanent injunction, enjoining defendant, its agents, servants, and employees, and all persons in active concert or participation with it, from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration; and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by defendant having a maximum rent determined by a rental agreement providing for a discount; and to set forth in said registration statement the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions.

Order for judgment

Plaintiff is entitled to judgment in the following form:

It Is Hereby Ordered, Adjudged and Decreed that the defendant, its agents, servants, and employees, and all persons in active concert or participation with it, be permanently enjoined from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or

Order of the Office of Price Administration; and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by defendant having a maximum rent determined by a rental agreement providing for a discount, and to set forth in said registration statement the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions.

It Is Further Ordered that that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that

41 defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation," be denied.

Let Judgment Be Entered Accordingly And A Writ Of Permanent Injunction Issue Forthwith.

Dated: November 8th, 1944.

MATTHEW M. JOYCE.
United States District Judge.

42 ***Exhibit "A"***

BELVEDERE APARTMENTS, 2896 JAMES AVENUE SOUTH, MINNEAPOLIS MINNESOTA

APARTMENT 107

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
Walter C. Koepke	11/3/42	$55.00	11/1-12/1/42	$50.00	$5.00	
	12/2/42	55.00	12/1-1/1/43	50.00	5.00	
	1/4/43	55.00	1/1-2/1/43	50.00	5.00	
	2/4/43	55.00	2/1-3/1/43	50.00	5.00	
	3/6/43	55.00	3/1-4/1/43	50.00	5.00	
	4/3/43	55.00	4/1-5/1/43	50.00	5.00	
	5/5/43	55.00	5/1-6/1/43	50.00	5.00	
	6/7/43	55.00	6/1-7/1/43	50.00	5.00	
						$40.00

BELVEDERE APARTMENTS, 2896 JAMES AVENUE SOUTH, MINNEAPOLIS MINNESOTA—Continued

APARTMENT 201

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
O. D. Campbell	10-13-42	$25.00	11/1-12/1/42	$50.00	$5.00	
	11-1-42	30.00				
	12-1-42	55.00	12/1-1/1/43	50.00	5.00	
	1-5-43	55.00	1/1-2/1/43	50.00	5.00	
	2-1-43	55.00	2/1-3/1/43	50.00	5.00	
	3-4-43	55.00	3/1-4/1/43	50.00	5.00	
	4-5-43	55.00	4/1-5/1/43	50.00	5.00	
	5-5-43	55.00	5/1-6/1/43	50.00	5.00	
	6-2-43	55.00	6/1-7/1/43	50.00	5.00	
						$40.00

APARTMENT 208

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
D. Olmstead; N. Olmstead; L. Bruneau, and D. Hock	10-18-42	$30.00	11/1-12/1/42	$53.50	$5.50	
	10-31-42	29.00				
	12- 5-42	59.00	12/1-1/1/43	53.50	5.50	
	1- 5-43	59.00	1/1-2/1/43	53.50	5.50	
	2- 4-43	59.00	2/1-3/1/43	53.50	5.50	
	3- 8-43	59.00	3/1-4/1/43	53.50	5.50	
	4- 5-43	59.00	4/1-5/1/43	53.50	5.50	
	5- 9-43	59.00	5/1-6/1/43	53.50	5.50	
	6- 9-43	59.00	6/1-7/1/43	53.50	5.50	
	8- 7-43	59.00	7/1-8/1/43	53.50	5.50	
						$49.50

APARTMENT 303

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
E. Russell Rudd	11-4-42	$45.00	11/1-12/1/42	$43.00	$2.00	
	12-2-42	45.00	12/1-1/1/43	43.00	2.00	
	1-3-43	45.00	1/1-2/1/43	43.00	2.00	
	2-6-43	45.00	2/1-3/1/43	43.00	2.00	
	3-5-43	45.00	3/1-4/1/43	43.00	2.00	
	4-5-34	45.00	4/1-5/1/43	43.00	2.00	
	5-5-43	45.00	5/1-6/1/43	43.00	2.00	
	6-2-43	45.00	6/1-7/1/43	43.00	2.00	
						$16.00

APARTMENT 306

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
Jean Craig & Beth Tanner	11-4-42	$45.00	11/1-12/1/42	$43.00	$2.00	
	12-4-42	45.00	12/1-1/1/43	43.00	2.00	
	1-5-43	45.00	1/1-2/1/43	43.00	2.00	
	2-5-43	45.00	2/1/43-3/1/43	43.00	2.00	
	3-3-43	45.00	3/1-4/1/43	43.00	2.00	
						$10.00

VINE HALL APARTMENTS, 1412–1425 LA SALLE AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 101

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Louis Barie	11-6-42	$53.50	No tenant card-record.	$50.00	$3.50	
	12-7-42	53.50	No tenant card-record.	50.00	3.50	
	1-5-43	53.50	No tenant card-record.	50.00	3.50	
	2-3-43	53.50	No tenant card-record.	50.00	3.50	
						$14.00

45

APARTMENT 208

Morris Holmberg	11-10-42	$28.75	11/5-11/30/42	$30.00	$3.75	
	12- 2-42	34.50	No Tenant card-record.	30.00	4.50	
	1- 5-43	34.50	No Tenant card-record.	30.00	4.50	
	2- 2-43	34.50	No Tenant card record.	30.00	4.50	
						$17.25

EL CAPITAN APARTMENTS, 3210 GIRARD AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
B. Abbott and L. W. Abbott	11- 5-42	$56.50	11/1-12/1/42	$55.00	$1.50	
Charles M. Lamar	11-28-42	9.00				
	11-29-42	16.00	12/1-1/1/43	55.00	1.50	
	12- 1-42	31.50				
	1- 4-43	56.50	1/1-2/1/43	55.00	1.50	
	1-31-43	56.50	2/1-3/1/43	55.00	1.50	
	3- 1-43	56.50	3/1-4/1/43	55.00	1.50	
	4- 3-43	56.50	4/1-5/1/43	55.00	1.50	
	5- 3-43	56.50	5/1-6/1/43	55.00	1.50	
	6- 3-43	56.50	6/1-7/1/43	55.00	1.50	
						$12.00

EL CAPITAN APARTMENTS, 3210 GIRARD AVENUE SOUTH, MINNEAPOLIS, MINNESOTA—Continued

46 APARTMENT 304

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
James M. Miller	11- 2-42	$56.50	11/1-12/1/42	$55.00	$1.50	
	12- 4-42	56.50	12/1-1/1/43	55.00	1.50	
	1- 3-43	56.50	1/1-2/1/43	55.00	1.50	
	2- 1-43	56.50	2/1-3/1/43	55.00	1.50	
	3- 1-43	56.50	3/1-4/1/43	55.00	1.50	
	4- 4-43	56.50	4/1-5/1/43	55.00	1.50	
	5- 3-43	56.50	5/1-6/1/43	55.00	1.50	
	6- 1-43	56.50	6/1-7/1/43	55.00	1.50	
						$12.00

DUPONT COURT APARTMENTS, 1101–1105 WEST 28TH STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 102

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mr.-Mrs. Guy L. Rice	11- 9-42	$52.50	11/1-12/1/42	$45.00	$7.50	
	12-10-42	52.50	12/1-1/1/43	45.00	7.50	
	1- 9-43	52.50	1/1-2/1/43	45.00	7.50	
	2-10-43	52.50	2/1-3/1/43	45.00	7.50	
	3-10-43	52.50	3/1-4/1/43	45.00	7.50	
	4-10-43	50.00	4/1-5/1/43	45.00	5.00	
	5-10-43	50.00	5/1-6/1/43	45.00	5.00	
	6-10-43	50.00	6/1-7/1/43	45.00	5.00	
						$52.50

47 APARTMENT 104

T. A. Regnier	10-31-42	$58.00	11/1-12/1/42	$43.00	$15.00	
	12- 6-42	58.00	12/1-1/1/43	43.00	15.00	
	1- 2-43	58.00	1/1-2/1/43	43.00	15.00	
	2- 8-43	58.00	2/1-3/1/43	43.00	15.00	
	3- 5-43	58.00	3/1-4/1/43	43.00	15.00	
	4- 4-43	58.00	4/1-5/1/43	43.00	15.00	
	5- 8-43	58.00	5/1-6/1/43	43.00	15.00	
	6- 7-43	58.00	6/1-7/1/43	43.00	15.00	
						$120.00

BRONZIN APARTMENTS, 125 OAK GROVE STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Frank H. Page	11- 1-42	$45.00	11/1-12/1/42	$42.50	$2.50	
	12- 1-42	45.00	12/1-1/1/43	42.50	2.50	
	1- 1-43	45.00	1/1-2/1/43	42.50	2.50	
	2- 1-43	45.00	2/1-3/1/43	42.50	2.50	
	3- 1-43	45.00	3/1-4/1/43	42.50	2.50	
	4- 1-43	45.00	4/1-5/1/43	42.50	2.50	
	5- 1-43	45.00	5/1-6/1/43	42.50	2.50	
	6- 1-43	45.00	6/1-7/1/43	42.50	2.50	
						$20.00

GRANADA APARTMENTS, 1456 LAGOON AVENUE, MINNEAPOLIS, MINNESOTA

APARTMENT 87

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Sophie Riese and Rose Riese	11- 5-42	$47.50	11/1-12/1/42	$46.00	$1.50	
	12- 4-42	47.50	12/1-1/1/43	46.00	1.50	
	1- 5-43	47.50	1/1-2/1/43	46.00	1.50	
	2- 4-43	47.50	2/1-3/1/43	46.00	1.50	
	3- 5-43	47.50	3/1-4/1/43	46.00	1.50	
	4- 5-43	47.50	4/1-5/1/43	46.00	1.50	
	5- 5-43	47.50	5/1-6/1/43	46.00	1.50	
	6- 5-43	47.50	5/1-7/1/43	46.00	1.50	
						$12.00

APARTMENT 305

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Lowell F. Wood	11-17-42	$15.00	12/1-1/1/43	$47.50	$5.00	
	11-21-42	37.50				
	1- 4-43	52.50	1/1-2/1/43	47.50	5.00	
	2- 2-43	52.50	2/1-3/1/43	47.50	5.00	
	3- 1-43	52.50	3/1-4/1/43	47.50	5.00	
	4- 1-43	52.50	4/1-5/1/43	47.50	5.00	
	5- 3-43	52.50	5/1-6/1/43	47.50	5.00	
	6- 1-43	52.50	6/1-7/1/43	47.50	5.00	
						$35.00

49 EMERSON COURT APARTMENTS, 1115–1125 WEST 28TH STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 201

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Lloyd W. Olson and Edith Olson.	11-5-42	$62.50	11/1 12/1/42	$53.50	$9.00	
	12-5-42	62.50	12/1-1/1/43	53.50	9.00	
	1-4-43	62.50	1/1-2/1/43	53.50	9.00	
	2-5-43	62.50	2/1-3/1/43	53.50	9.00	
	3-5-43	62.50	3/1-4/1/43	53.50	9.00	
	4-5-43	62.50	4/1-5/1/43	53.50	9.00	
	5-5-43	62.50	5/1-6/1/43	53.50	9.00	
	6-5-43	62.50	6/1-7/1/43	53.50	9.00	
						$72.00

MARTINIQUE APARTMENTS, 2880 JAMES AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mrs. Alice Gilmore	11-14-42	$40.00	11/1-12/1/42	$35.00	$5.00	
	12-16-42	40.00	12/1-1/1/43	35.00	5.00	
	1-15-43	40.00	1/1-2/1/43	35.00	5.00	
	2-16-43	40.00	2/1-3/1/43	35.00	5.00	
	3-15-43	40.00	3/1-4/1/43	35.00	5.00	
	4-15-43	40.00	4/1-5/1/43	35.00	5.00	
	5-17 43	40.00	5/1-6/1/43	35.00	5.00	
	6-16-43	40.00	6/1-7/1/43	35.00	5.00	
						$40.00

50 APARTMENT 201

Ira A. Desper	11-9-42	$58.50	11/1-12/1/42	$52.50	$6.00	
	12-5-42	58.50	12/1-1/1/43	52.50	6.00	
	1-4-43	58.50	1/1-2/1/43	52.50	6.00	
	2-5-43	58.50	2/1-3/1/43	52.50	6.00	
	3-6-43	58.50	3/1-4/1/43	52.50	6.00	
	4-5-43	58.50	4/1-5/1/43	52.50	6.00	
	5-8-43	58.50	5/1-6/1/43	52.50	6.00	
	6-5-43	58.50	6/1-7/1/43	52.50	6.00	
						$48.00

MARTINIQUE APARTMENTS, 2880 JAMES AVENUE SOUTH, MINNEAPOLIS, MINNESOTA—Continued

APARTMENT 206

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mrs. C. M. Sullivan and Marian O. Sullivan	10-30-42	$10.00	11/1-12/1/42	$30.00	$10.00	
	11- 3-42	30.00				
	12- 5-42	40.00	12/1-1/1/43	30.00	10.00	
	1- 6-43	40.00	1/1/43-2/1/43	30.00	10.00	
	2-11-43	40.00	2/1-3/1/43	30.00	10.00	
	3- 4-43	40.00	No card record	30.00	10.00	
Beth Tanner & Jean Craig	4- 3-43	46.50	4/1-5/1/43	30.00	16.50	
	5- 4-43	46.50	5/1-6/1/43	30.00	16.50	
	6- 7-43	46.50	6/1-7/1/43	30.00	16.50	
						$99.50

APARTMENT 304

Raymond B. Cox	10/30/42	$47.50	11/1-12/1/42	$42.50	$5.00	
	12/ 3/42	47.50	12/1-1/1/43	42.50	5.00	
	1/ 2/43	47.50	1/1-2/1/43	42.50	5.00	
	2/ 1/43	47.50	2/1-3/1/43	42.50	5.00	
	3/ 1/43	47.50	3/1-4/1/43	42.50	5.00	
	4/ 2/43	47.50	4/1-5/1/43	42.50	5.00	
	5/ 1/43	47.50	5/1-6/1/43	42.50	5.00	
	6/ 1/43	47.50	6/1-7/1/43	42.50	5.00	
						$40.00

APARTMENT 305

Maurice E. Grochau	11/10/42	$47.50	11/1-12/1/42	$43.50	$4.00	
	12/11/42	47.50	12/1-1/1/43	43.50	4.00	
	1/ 9/43	47.50	1/1-2/1/43	43.50	4.00	
	2/ 5/43	47.50	2/1-3/1/43	43.50	4.00	
	3/11/43	47.50	3/1-4/1/43	43.50	4.00	
						$20.00

52 *Exhibit "B"*

WARNER HOLDING COMPANY

1222-24-26 Baker Building

MINNEAPOLIS, MINNESOTA

SEPTEMBER 24, 1943.

MRS. ELIZABETH HOFFMAN,
Apartment #111,
1101 West 28th Street, Minneapolis, Minnesota.

DEAR-MADAM:

Assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated October 31, 1943.

We have claimed and believe that the Emergency Price Control Act of 1942 as respects rents and the confiscatory and ridiculous regulations issued by the Administrator and promulgated under and by virtue of the said Act, are unconstitutional and void. Litigation is pending whereby we are testing the legality of the Act. It is our intention to present the matter to the highest court in the land.

This is to notify you that if the Emergency Price Control Act of 1942 as respects rents is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond October 31, 1943, that you are obligated to us for ten months' rent at a cost to you of $900.00, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same, payable in installments of $45.00 each and every month if paid later than the 5th of the month in which the installment is due, or $40.00 each and every month if paid on or before the 5th of the month in which it is due, up and until July 1, 1944, when the balance of $900.00 will be due and payable for the period October 31, 1943 to August 31, 1944.

As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes, and notices in the matter. However, we have
53 no desire to have you continue residing in our premises, and much prefer that you vacate the apartment on October 31, 1943, as requested.

Yours truly,

WARNER HOLDING COMPANY,
(S) H. L. WARNER, *Pres.*

[File endorsement omitted.]

In the District Court of the United States for the District of Minnesota, Fourth Division

No. 884—Civil Action

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PLAINTIFF

vs.

WARNER HOLDING COMPANY, A CORPORATION, DEFENDANT

Judgment

November 10, 1944

Pursuant to Findings of Fact, Conclusions of Law and Order for Judgment, heretofore entered and filed in this matter on November 8th, 1944,

It Is Hereby Ordered, Adjudged, And Decreed that the defendant, its agents, servants, and employees, and all persons in active concert or participation with it, be permanently enjoined from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration;

and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by de-
54 fendant having a maximum rent determined by a rental agreement providing for a discount, and to set forth in said registration statement, the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions, and that a Writ of Permanent Injunction be accordingly issued forthwith.

It Is Further Ordered That that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maxi-

mum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation" be denied.

Dated: November 10th, 1944.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In the District Court of the United States for the District of Minnesota

[Title omitted.]

Notice of appeal

Filed Jan. 31, 1945

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff above named, ap-
55 peals to the Circuit Court of Appeals for the Eighth Circuit from that portion of the judgment entered in this action on November 10, 1944, whereby the court denied a part of plaintiff's prayer for relief, such portion of the judgment appealed from being as follows:

"It Is Further Ordered that that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation" be denied.

HARRY E. WITHERELL,
HARRIS J. NUERNBERG,
ABRAHAM H. MALLER,
Attorneys for Plaintiff.
Office of Price Administration,
226 W. Jackson Boulevard, Chicago 6, Illinois.

Copy of this Notice of Appeal mailed to R. H. Fryberger, Esq., Attorney at Law, 1110 Baker Bldg., Minneapolis, Minnesota this 31st day of January, 1945.

THOMAS H. HOWARD,
Clerk,
By CHELL M. SMITH,
Chief Deputy.

[File endorsement omitted.]

56 In the District Court of the United States,
for the District of Minnesota

[Title omitted.]

Statement of points to be relied on upon appeal

Filed Feb. 28, 1945

Comes now the plaintiff and designates the following points to be relied on upon the appeal herein:

1. That the Court erred in concluding as a matter of law that it lacked the power to make an order requiring defendant to tender to persons a refund of amounts collected by defendant as rent in excess of the maximum amounts established by the rent regulation.

2. That the Court erred in denying the plaintiffs thereafter an order directing said defendant to refund to its tenants the amounts collected by it as rent in excess of the maximum rents established by the rent regulation.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.
HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 W. Jackson Blvd., Chicago 6, Illinois.

[File endorsement omitted.]

57 IN UNITED STATES DISTRICT COURT

Designation of matters to be contained in transcript on appeal

(Filed Feb. 28, 1945)

Comes now the plaintiff and designates the following portions of the record herein as the record on appeal to the Circuit Court of Appeals for the Eighth Circuit:

1. Amended and supplemental complaint filed November 27, 1943.
2. Answer to amended and supplemental complaint filed December 18, 1943.
3. The memorandum decision of the Court filed October 26, 1944.
4. The findings of fact, conclusions of law and order for judgment filed November 8, 1944.
5. The judgment entered November 10, 1944.
6. Notice of appeal.
7. Statement of points.
8. This designation.
9. Proof of service of statement of points and of this designation.
10. Any order that may be entered extending time for filing of record on appeal and docketing action, and any notice, motion and stipulation upon which any such order may be based.
11. Clerk's certificate of record.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office Of Price Administration, Washington 25, D. C.

58

HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 West Jackson Boulevard, Chicago 6, Illinois.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Notice to defendant of filing of designation of record and statement of points

Filed Feb. 28, 1945

To: R. H. FRYBERGER and M. R. KEITH,
1101 Baker Building, Minneapolis, Minnesota,
Attorneys for Defendant-Appellee.

Please Take Notice that we have this day mailed to the Office of the Clerk of the United States District Court for the District of Minnesota, Fourth Division, Minneapolis, Minnesota, an original and copy of Appellant's Designation of Record and Statement of Points to be Relied on Upon Appeal. A copy of each of said documents is hereto attached and herewith served upon you.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office Of Price Administration, Washington 25, D. C.
HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 West Jackson Boulevard, Chicago 6, Illinois.

59 STATE OF ILLINOIS,
County of Cook, ss:

Elsie Tuckman being first duly sworn, on oath deposes and says that she served the within notice upon the within named R. H. Fryberger and M. R. Keith by placing a true and correct copy thereof, together with a true and correct copy of the Designation of Record and Statement of Points to be Relied on Upon Appeal, therein referred to, in a government franked envelope addressed to said R. H. Fryberger and M. R. Keith, 1110 Baker Building, Minneapolis, Minnesota, and placing said envelope, duly sealed in

the United States mail box at the southeast corner of Franklin Street and Jackson Boulevard, Chicago, Illinois, this 26th day of February 1945, at about the hour of 5:30 o'clock p. m.

ELSIE TUCKMAN.

Subscribed and sworn to before me this 26th day of February 1945.

[NOTARIAL SEAL]

A. H. Maller,
Notary Public.
A. H. MALLER,
Notary Public, Cook County, Illinois.

[File endorsement omitted.]

In United States District Court

Stipulation to amend designation and include additional matters in transcript on appeal

Filed March 28, 1945

Whereas, on February 28, 1945, the plaintiff in the above-entitled action filed a Designation of Record in the above matter for the purposes of appeal, and

Whereas, there was omitted from said Designation of Record the amendment to the prayer of plaintiff's Amended and Supplemental Complaint, which amendment was filed May 11, 1942,

Now Therefore, It Is Hereby Stipulated And Agreed by and between the parties to the above-entitled action, through their respective attorneys:

1. That said Designation of Record be amended so as to include:

60 (a) The said amendment to the prayer of plaintiff's Amended and Supplemental Complaint, filed May 11, 1942;

(b) This stipulation;

(c) The Amended Designation of Record which will be filed simultaneously with this stipulation as hereinafter more particularly referred to.

2. That plaintiff may prepare and file an Amended Designation of Record which shall include, in addition to all of the items appearing on the original Designation of Record, the amendment to the prayer of plaintiff's Amended and Supplemental Complaint, filed May 11, 1942, this stipulation, and said Amended Designation of Record.

Dated this 26th day of March 1945.

HARRY WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
Office of Price Administration, Chicago 6, Illinois.
HYMEN L. GREENBERG,
Litigation Attorney,
Office of Price Administration, St. Paul 1, Minnesota.
R. H. FREYBERGER and
M. R. KEITH,
Attorneys for Defendant,
THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.

61 In United States District Court

[File endorsement omitted.]

Order enlarging time within which to docket record in Circuit Court of Appeals

Filed March 6, 1945

For good cause shown, it is

Ordered: that the time within which to docket the record on appeal in the above entitled cause be, and the same is hereby enlarged to and including the 21st day of April, 1945.

Dated: March 6, 1945.

MATTHEW M. JOYCE,
Judge, U. S. District Court.

[File endorsement omitted.]

In United States District Court

Amended designation of matters to be contained in transcript on appeal

Filed March 28, 1945

Comes now the plaintiff and designates the following portions of the record herein as the record on appeal to the Circuit Court of Appeals for the Eighth Circuit:

1. Amended and supplemental complaint filed November 27, 1943.
2. Answer to amended and supplemental complaint filed December 18, 1943.
3. Amendment to the prayer of Amended and Supplemental Complaint, filed May 11, 1944.
4. The memorandum decision of the Court filed October 26, 1944.
5. The findings of fact, conclusions of law and order for judgment filed November 8, 1944.
6. The judgment entered November 10, 1944.
7. Notice of appeal.
8. Statement of points.
9. Designation of record filed February 28, 1945.

62 10. Proof of service of statement of points and designation of record filed February 28, 1945.

11. Stipulation to amend designation of record, filed March 28, 1945.
12. This amended designation of record.
13. Proof of service of this amended designation of record.
14. Any order that may be entered extending time for filing of record on appeal and docketing action, and any notice, motion and stipulation upon which any such order may be based.
15. Clerk's certificate of record.

HARRY WITHERELL,
Regional Litigation Attorney.
ABRAHAM H. MALLER,
Attorney.
Office of Price Administration, Chicago 6, Illinois.
HYMEN L. GREENBERG,
Litigation Attorney.
Office of Price Administration, St. Paul 1, Minnesota.
THOMAS I. EMERSON,
Deputy Administrator for Enforcement.
FLEMING JAMES, JR.,
Director, Litigation Division.
DAVID LONDON,
Chief, Appellate Branch.
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.

63 STATE OF MINNESOTA,
County of Ramsey, ss:

Ruth M. Buettner being first duly sworn, on oath deposes and says that she served the attached amended designation of record on R. H. Fryberger and M. R. Keith by placing a true and correct

copy thereof in a government franked envelope addressed to R. H. Fryberger and M. R. Keith, 1110 Baker Building, Minneapolis, Minnesota, and placing said envelope, duly sealed, in the United States mail box located on the first floor of the First National Bank Building, Saint Paul, Minnesota, this 28th day of March, 1945, at about the hour of 11:30 o'clock A. M.

RUTH M. BUETTNER.

Subscribed and sworn to before me this 28th day of March 1945.

[NOTARIAL SEAL] L. F. YOUNG,
Notary Public, Ramsey County, Minn.

My commission expires Feb. 18, 1948.

[File endorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

65 [Appearances of counsel omitted in printing.]

67 In United States Circuit Court of Appeals, Eighth Circuit

Order of submission

September 10, 1945.

This cause having been called for hearing in its regular order, argument was commenced by Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration, for appellant, continued by Mr. R. H. Fryberger for appellee, and concluded by Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration, for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

68 In United States Circuit Court of Appeals, Eighth Circuit

No. 13087

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

vs.

WARNER HOLDING COMPANY, A CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Minnesota

Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration (Mr. George Moncharsh, Deputy Administrator for Enforcement, O. P. A., Mr. Fleming James, Jr., Director,

Litigation Division, O. P. A., Mr. David London, Chief, Appellate Branch, O. P. A., Mr. Harry Witherell, Regional Litigation Attorney, O P. A., and Mr. Harris Nuernberg, District Enforcement Attorney, O. P. A., were with him on the brief) for Appellant.

Mr. R. H. Fryberger (Mr. M. R. Keith and Mr. G. W. Townsend were with him on the brief) for Appellee.

Before GARDNER, SANBORN, and THOMAS, Circuit Judges.

Opinion

October 31, 1945

69 SANBORN, Circuit Judge, delivered the opinion of the Court.

This is an action brought by the Administrator of the Office of Price Administration, under § 205 (a)[1] of the Emergency Price Control Act of 1942 [56 Stat. 23, 33; 50 U. S. C. A. Appendix § 925 (a)], to compel compliance with § 4 (a)[2] of the Act. The question for decision is whether the District Court erred in refusing to order the defendant (appellee) to tender to tenants, from whom it had collected rentals in excess of the maximum permitted by the applicable regulation, the amounts which they had been overcharged.

The appellee, Warner Holding Company (which will be referred to as "defendant"), owns eight apartment buildings in the city of Minneapolis, containing about 250 dwelling units. Maximum Rent Regulation 53 (7 F. R. 8596), redesignated as "Rent Regulation for Housing" (8 F. R. 7822), prescribed, on and after November 1, 1942, maximum rents for defendant's housing accommodations. Between November 1, 1942, and June 29, 1943, the defendant demanded and collected rents in excess of those

70 permitted by the regulation. For some time prior to June 29, 1943, the defendant had knowledge of the amounts of the overcharges collected and of the tenants from whom the overcharges had been collected. The defendant has failed and refused to tender to such tenants refunds of the overcharges.

---

[1] Section 205 (a) reads as follows:
"Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

[2] Section 4 (a) [56 Stat. 28; 50 U. S. C. A. Appendix § 904 (a)] reads as follows:
"It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

The Administrator commenced this action on February 13, 1943. On June 29, 1943, the District Court granted a preliminary injunction against the defendant, restraining it from collecting rents in excess of those permitted by the regulation. Brown v. Warner Holding Co., 50 F. Supp. 593. After a trial in May, 1944, the court found the issues in favor of the Administrator, and entered a judgment granting him the injunctive relief which he sought, except that the court denied the prayer of the Administrator that the defendant be required "to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e)[3] of the
71 Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said regulation."

The Administrator has appealed from that portion of the judgment which denied his prayer for an order requiring the defendant to tender refunds of overcharges.

The District Court, in effect, construed the Act as providing two specific civil remedies or causes of action, the first, under § 205 (a), in favor of the Administrator, for injunctive relief to

---

[3] Section 205 (e), 56 Stat. 34, provided:

"If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsectioon, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

Section 205 (e) was amended June 30, 1944 [§ 108 (b), 58 Stat. 640; 50 U. S. C. A. Appendix § 925 (e)]. The section as amended contains the following provision:

"* * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered."

The violations here in suit were all committed prior to June 30, 1944, the effective date of the amendment.

enforce compliance; and the second, under § 2205 (e), primarily in favor of persons who had been overcharged, to obtain adequate redress and the expense of procuring it. The court was of the opinion that these remedies were intended to be and were exclusive of other civil remedies to enforce compliance or to redress past violations, and that § 205 (a) did not, either expressly or impliedly, authorize the Administrator to apply for, or the court to grant, an order requiring the defendant to tender refunds of rental overcharges collected from its tenants prior to June 29, 1943, the date when the defendant was, by the preliminary injunction, compelled to desist from demanding rentals in excess of the maximum.

72 The contention of the Administrator is, in substance, that by § 205 (a) the District Court was granted complete power to effectuate the policy and purpose of the Act; that a proceeding under § 205 (a) is an appeal to the equity jurisdiction of the court and to its discretion (Hecht Co. v. Bowles, 321 U. S. 321, 329); that language in other statutes authorizing the court "to prevent and restrain violation," has been held to confer full equity powers upon the court to effectuate the purposes of the statute (United States v. United States Steel Corporation, 251 U. S. 417, 452; United States v. Bausch & Lomb, Optical Co., 321 U. S. 707; Walling v. Miller, 8 Cir., 138 F. 2d 629, 633; Fleming v. Alderman, (D. C. Conn.) 51 F. Supp. 800; Walling v. O'Grady, 2 Cir., 146 F. 2d 422); that plenary jurisdiction to effectuate the policy of a statute includes power to restore the status quo; that this enforcement action is a statutory proceeding in the public interest looking to public ends, to which the right of jury trial does not apply (Agwilines, Inc. v. National Labor Relations Board, 5 Cir., 87 F. 2d 146, 151); and that the remedy given by § 205 (e) of the Act to those who are overcharged does not affect the power of the court, in an action brought under § 205 (a), to order restitution to effectuate the purpose of the Act.

The defendant argues that there is no language in § 205 (a) to justify a conclusion that the court was granted the power to order restitution of overcharges; that the plenary power granted to effectuate the purpose of a statute must be predicated upon jurisdiction of the subject matter and of all interested parties; that, since the rights of tenants are here involved, no order of restitution could be entered in the absence of jurisdiction over them; and that equitable relief to restore status can be had only as between those who are parties to the action.

The problem presented is one with respect to which there is a difference of informed opinion. The views of the District
73 Court and of the defendant find support in Bowles, Administrator v. Skaggs, (D. C. W. D. Ky.) 59 F. Supp. 4. The case of Office of Price Administration v. Georgian Hotel Co., (D. C. Mass), 60 F. Supp. 155, sustains the position of the Administrator. The Administrator is of the opinion that the concurring opinion in Walling v. Miller, 8 Cir., 138 F. 2d 629, 633, and the cases of Fleming v. Alderman, (D. C. Conn.) 51 F. Supp. 800, and Walling v. O'Grady, 2 Cir., 146 F. 2d 422, all of which dealt with the Fair Labor Standards Act, clearly indicate that the District Court had the power to order restitution of overcharges in connection with granting injunctive relief.

That the reparation order which the Administrator sought would have been in the public interest, would have been appropriate, and would have required the defendant to do no more than it should voluntarily have offered to do to bring itself into compliance with the Act from the time the rent regulation became effective, is, we think, beside the point. The question is whether Congress in § 205 (a) of the Act authorized the Administrator to apply for, and empowered the court to grant, reparation orders as a means of enforcing compliance with the Act.

The Administrator is seeking to enforce a right created by the Act. Concededly, he is proceeding in his own behalf under § 205 (a). That section, which is sufficiently specific, governs the procedure in enforcement actions brought by the Administrator in both state and federal courts, and it is fair to assume that the language of the section expressed with substantial accuracy the intent of Congress as to the nature of the remedy which the Administrator was authorized to seek from the courts in order to enforce compliance with the Act. See Hecht Co. v. Bowles, 321 U. S. 321, 330. At the time this legislation was enacted, Congress apparently believed that the remedy afforded the Adminis-
74 trator by § 205 (a) to enforce compliance by procuring injunctive orders or their equivalents (see Hecht Co. v. Bowles, supra, page 328 of 321 U. S.), and the remedy furnished by § 205 (e) to those who were overcharged and were entitled to sue (and to the Administrator if they were not entitled to sue) to recover damages and expenses, would constitute adequate civil remedies to effectuate the purposes of the Act. Evidently it was found that § 205 (e) as originally enacted was ineffective, and it was therefore amended so that the Administrator might enforce the remedy provided by that section if the persons who were entitled to it failed to act promptly. The fact that Congress amended § 205 (e) so as to enlarge the right of the Administrator to secure

the reparations therein provided for, militates against his contention here that under § 205 (a) he always had the right to seek, and the court the power to grant, reparation orders to effectuate the purpose of the Act.

It is well settled "That where a statute creates a right and provides a special remedy, that remedy is exclusive. Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U. S. 165, 174–175; Arnson v. Murphy, 109 U. S. 238; Barnet v. National Bank, 98 U. S. 555, 558; Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35." United States v. Babcock, 250 U. S. 328, 331. See, also, Hassel, v. United States, 3 Cir., 34 F. 2d 34, 36 and cases cited. The rule is stated in 50 Am. Jur., Statutes, § 596, pages 593–594, as follows: "It is an established principle, that if a statute creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy thus prescribed is exclusive. In such case, such remedy must be pursued in the enforcement of the right to the exclusion of any other remedy."

75 It is our opinion that this established rule of law governs this case and that § 205 (a) provides a specific and exclusive statutory remedy for enforcing compliance with the Act. We also think that § 205 (a) discloses no intent on the part of Congress to make reparation orders available to the Administrator. This Court cannot enlarge the statutory scheme of enforcement. see Globe Newspaper Co. v. Walker, 210 U. S. 356, 364.

We do not regard the views which we have expressed as inconsistent with Walling v. O'Grady, supra, 146 F. 2d 422, or the other cases dealing with the Fair Labor Standards Act, upon which the Administrator relies. It is true that those cases hold that, under that Act, in actions brought by the Administrator of the Wage and Hour Division to restrain violations, reparation orders may be granted in connection with injunctive relief. However § 17 of the Fair Labor Standards Act (52 Stat. 1069; 29 U. S. C. A. § 217) authorizes the federal district courts, broadly, "to restrain violations". The statutory remedy may thus be regarded as general and cumulative, rather than special and exclusive. It is to be noted that in Walling v. O'Grady, supra, page 423 of 146 F. 2d, the court was careful to distinguish the case from that of Decorative Stone Co. v. Building Trades Council, 2 Cir., 23 F. 2d 426, in which it was held that the statutory remedies prescribed by the Clayton Act were exclusive.

The judgment appealed from is affirmed.

76 In United States Circuit Court of Appeals, Eighth Circuit

No. 13087—September Term, 1945

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

vs.

WARNER HOLDING COMPANY, A CORPORATION

Appeal from the District Court of the United States for the District of Minnesota

Judgment

October 31, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either of the parties in this Court.

77 [Clerk's certificate to foregoing transcript omitted in printing.]

78 Supreme Court of the United States

Order allowing certiorari

Filed March 11, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

(Endorsement on cover:) File No. 50496. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 793. Paul A. Porter, Administrator, Office of Price Administration, Petitioner *vs.* Warner Holding Company. Petition for a writ of certiorari and exhibit thereto. Filed January 30, 1946. Term No. 793 O. T. 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1946